(2016) 02 KL CK 0049

In the High Court Of Kerala

Case No : WP(C) No. 18300 of 2015 (J)

Bahuleyan and Others		APPELLANT
	Vs	
State of Kerala and Others		RESPONDENT

Date of Decision : 09-02-2016

Acts Referred:
Constitution of India, 1950 — Article 14

Citation : (2016) 150 FLR 103 : (2016) 2 LLN 182

Hon'ble Judges : Dama Seshadri Naidu, J.

Bench : Single Bench

Advocate : K.S. Madhusoodanan, M.M. Vinod Kumar, K.M. Ramya, P.K. Rakesh Kumar and K.S. Mizver, Advocates, for the Appellant; G. Gopakumar, Government Pleader, for the Respondent

Final Decision : Allowed

Judgement

Dama Seshadri Naidu, J.—1. The petitioners, forty-nine in number, retired from the service of the third respondent between 2006 and 2014, have assailed the third respondent''s denying them the benefit of House Rent Allowance (''HRA'') and City Compensatory Allowance (''CCA''). The third respondent has confined the benefit, according to the petitioners, only to the employees in service, despite the fact that the benefit was part of a pay revision for the year 1998 and, by then, all the petitioners were in service.

2. It is evident from the record that, all along, the third respondent, a Public Sector undertaking, has been adopting the government''s pay revision vis-?-vis its employees. In 1998, the Government came up with a pay revision applying it retroactively from 01.03.1997. Following suit, the third respondent issued Exhibit P3 proceedings adopting government''s Exhibit P2 pay revision.

3. Evident is the fact that at the time of issuing Exhibit P3 pay revision, the third respondent has, however, omitted to incorporate the revised benefit of CCA, though there was a mention about HRA. Further, the third respondent could not

implement Exhibit P3 pay revision, altogether, for want of sanction from the Government. In the course of time, the third respondent passed Exhibit P4 order terming it an anomaly-rectification order. Though many anomalies present in Exhibit P3 were rectified, the third respondent yet again omitted to address the issue of CCA.

4. Seeking implementation of Exhibit P3 and also Exhibit P4, the anomaly rectification order, the third respondent addressed Exhibit P5 letter to the first respondent, the Government, seeking sanction in that regard. In the meanwhile, complaining of the delay on the Government''s part in considering the third respondent''s Exhibit P5 request, the first petitioner herein, along with certain other employees, filed W.P. (C) No. 26379/2011 and invited Exhibit P6 judgment. This Court has directed the first respondent to take a final decision on Exhibit P5 within one month''s time.

5. As can be seen from the record, the first respondent, in compliance with Exhibit P6 judgment, issued Exhibit P7 order directing, among other things, that the third respondent should follow Exhibit P2 scrupulously. In the tabulated items to be implemented, the Government mentioned both HRA and CCA.

6. As can be seen, the third respondent, in fact, passed Exhibit P8 consequential order; nevertheless, it has, for the reasons not ascertainable, decided to apply the revised benefit of HRA and CCA only to the benefit of those employees presently in service with effect from 01.01.1998, though. Aggrieved, the petitioners have filed the present writ petition.

7. The learned counsel for the petitioners has strenuously contended that Exhibit P8 is patently discriminatory and thereby illegal. In elaboration of his submissions, he has contended that Exhibit P7, the order of the Government, has never discriminated against the employees who retired by the time Exhibit P3 could be implemented.

8. It is the learned counsel''s singular contention that as Exhibit P3 was implemented retrospectively with effect from 01.01.1998, and as all the petitioners had been in service by then, the benefits extended by correcting the anomalies ought to have been applied to those employees, too. In this regard, the learned counsel has urged this Court that Exhibit P7 brings into play a legal fiction because the benefits were given retroactively, and by then the petitioners were in service.

9. The learned counsel has further contended that rectification of an anomaly does not amount to conferring any new benefit on the employees. Once the rest of the pay revision has been applied to the petitioners despite their having been retired, selective denial of revised HRA and CCA falls foul of Article 14 of the Constitution. To hammer home his contention that anomaly rectification does not amount to conferring any new benefit, the learned counsel for the petitioners has placed reliance on Haryana State Minor Irrigation Tubewells Corporation & Ors. v. G.S. Uppal & Ors. , AIR 2008 Supreme Court 2152.

10. The learned Standing Counsel for the third respondent, on the other hand, has submitted that this Court has passed Exhibit P6 direction to the first respondent herein to take a final decision in a time bound manner on the proposals for rectification of anomalies in the pay revision order. Pursuant to the above direction, the first respondent issued Exhibit P7 order dated 24.6.2014 rectifying the anomalies in the implementation of the pay revision. On the basis of Exhibit P7 order, the third respondent has passed consequential Exhibit P8 order giving effect to the orders of pay revision in full.

11. According to the learned Standing Counsel, the petitioners'' only claim is that they should be given the benefits of revision in HRA and CCA with retrospective effect from 01.01.1998 till the date of their retirement, with interest. The said demand is not consistent with the directions of the first respondent in Exhibit P7 and hence are liable to be rejected.

12. The learned Standing Counsel has further contended that in Clause I of Exhibit P7, the Government has specifically stated, while ratifying the proceedings of the Managing Director, Hantex, concerning HRA and CCA, that paragraphs 11 (ii) and 13 of Exhibit P2 order are to be followed.

13. Further, in tune with the submissions made by the learned Standing Counsel for the third respondent, the learned Government Pleader has submitted that only the employees in service are eligible to draw HRA & CCA. The order denying the petitioners the retroactive benefit of HRA & CCA is, according to him, unexceptionable.

14. The learned Government Pleader has also contended that as per the existing guidelines, only the in-service employees are eligible to get the allowance, and it is from the date of order, at that. The HRA & CCA, contends the learned Government Pleader, are not statutory payments like Basic Pay and Dearness Allowance. So, the retired employees cannot claim it as a statutory right.

15. In sum and substance, the singular contention of the learned Government Pleader is that the HRA & CCA are sanctioned only to existing employees. Since the petitioners have retired from service prior to the Government''s Order ratifying the Pay Revision, they are not eligible.

16. Heard the learned counsel for the petitioners and the learned Standing Counsel for the respondents, as well as the learned Government Pleader, apart from perusing the record.

17. It is not in dispute that the third respondent has all along been adopting the government''s pay revision. In 1999, it issued Exhibit P3 proceedings adopting government''s Exhibit P2 pay revision for the year 1998. As has been delineated above, since Exhibit P3 contains certain anomalies, the third respondent issued Exhibit P4 proceedings and eventually obtained sanction from the Government through Exhibit P7. While implementing the government''s mandate as was reflected in Exhibit P7, the third respondent issued Exhibit P8 proceedings.

18. Indisputably, the petitioners were given all other benefits, whether actually paid or not, in tune with Exhibit P2. The fact, however, remains that the petitioners as well as the in-service candidates still have to get some more benefits as the pay revision was implemented partially. As to the HRA and CCA, the petitioners could not get the benefit while they were in-service for either the third respondent omitted those items as a matter of anomaly or the Government did not accord the sanction at the earliest point in time.

19. Now, the first respondent as well as the third respondent has come up with its defence that HRA and CCA are not substantial statutory benefits applicable to the employees, and ipso facto no employee has any vested right to demand the benefit.

20. At this juncture, it is apposite to observe that it is not the question of a benefit being substantial or insignificant. It is, indeed, a question of extending the benefit equitably to all the similarly situated persons. Conversely, it is a question of denying a benefit to a section of employees despite the fact that there is no distinguishing factor between the deprived section and the rewarded section.

21. Evidently, what weighed with the third respondent, and in turn, perhaps, with the Government, is that the petitioners were not in service by the time the anomaly was rectified. In my considered opinion, the factum that the petitioners retired in the interim hardly matters.

22. Once a benefit has been extended retroactively and, more particularly, it was by way of rectifying an anomaly, the legal fiction demands that the entire process stood rectified as on the date of its introduction; that is, in this case 01.01.1998. Since the petitioners were in-service by then, the action of the third respondent in denying the petitioners'' benefit of revised HRA and CCA in terms of Exhibits P7 and P8 is patently discriminatory and falls foul of Article 14 of the Constitution.

23. Indeed, in G.S. Uppal (supra) the Honourable Supreme Court has held that once an anomaly is found in the pay scale given to a class of government servants and the said anomaly is rectified, it is not a new pay revision but a correction of the original pay revision, or an amendment to the pay scale that has already been granted.

24. Going by the above ratio, I have no manner of doubt that Exhibit P8 suffers from an incurable legal infirmity of being discriminatory and requires to be, and accordingly, set aside to the extent of its denying the benefit of HRA and CCA to the petitioners with effect from 01.01.1998 till the date of their actual retirement.

25. Granted that all the petitioners have already retired, the third respondent shall extend to the petitioners the benefit of revised HRA and CCA in terms of Exhibit P7 as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

With the above directions, the writ petition stands allowed. No order as to costs.